NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Eagle Ray Electric Company and International Brotherhood of Electrical Workers, Local #1, AFL-CIO. Case 14-CA-29685

May 29, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 23, 2009, the General Counsel issued the complaint on April 2, 2009, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Case 14-RC-12739. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sections 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer on April 16, 2009, and an amended answer on April 20, 2009, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 24, 2009, the General Counsel filed a Motion for Summary Judgment. On April 28, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The Union filed a response in support of the motion.

Ruling on Motion for Summary Judgment¹

The Respondent admits its refusal to bargain with the Union and its refusal to furnish information requested by

the Union. The Respondent, however, contends that the Board's certification of the Union was improper, and that it therefore has no obligation to bargain with the Union or to provide the requested information.

All representation issues raised by the Respondent could have been litigated in the prior representation proceeding.² The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.³ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that by letter dated March 13, 2009, the Union requested the following information:

- 1. The names, addresses, and phone numbers of all current bargaining unit employees;
- 2. Classification of each bargaining unit employee, their date of hire, and their wage rate;
- 3. Fringe benefits provided each bargaining unit employee, including:
 - a. Vacation policy and pay
 - b. Holiday policy and pay
 - c. Health insurance policy and SPDs and plan documents
 - d. Health insurance premium paid by employer on each employee
 - e. Any profit sharing plan
 - f. Sick leave and personal leave policies and pay
 - g. Short and long term disability insurance policies
 - h. Retirement policy and benefits
 - i. Life insurance policies
 - j. Overtime pay and policies

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, ____ F.3d ____, 2009 WL 1162556 (7th Cir. May 1, 2009), petition for cert. filed ___ U.S.L.W. ___ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, ____ F.3d ____, 2009 WL 1162574 (D.C. Cir. May 1, 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

² The Respondent did not file any objections to the conduct of the election in the underlying representation proceeding.

³ In its answer, the Respondent asserts as an affirmative defense that it is "winding down business operations" due to economic conditions. No evidence has been offered in support of this assertion. However, even assuming that the assertion is true, the Respondent must, at a minimum, bargain with the Union over the effects of any such decision. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 (1981); *U-Haul Co. of Nevada*, 345 NLRB 1301, 1302 (2005), enfd. 490 F.3d 957 (D.C. Cir. 2007). Accordingly, the Respondent's assertion is not a defense for failing to recognize and bargain with the Union, and we find that it raises no factual issues warranting a hearing.

- k. Any policies on company trucks, phones, and GPS units;
- Any and all employee manuals and company work rules currently in effect covering bargaining unit employees, including but not limited to, policies and rules relating to discipline, start and stop times, breaks, job assignments, layoffs, and recalls; and
- 5. A list of current jobsites.

It is well established that the foregoing types of information sought by the Union are presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of the information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified.

Accordingly, we grant the Motion for Summary Judgment, and we will order the Respondent to bargain with the Union and to furnish the Union with the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation with an office and place of business in Ellisville, Missouri, herein called the Respondent's facility, has been an electrical contractor in the construction industry.

During the 12-month period ending March 31, 2009, the Respondent, in conducting its business operations described above, purchased and received at its Ellisville, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Brotherhood of Electrical Workers, Local #1, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held October 17, 2008, the Union was certified on February 5, 2009,⁴ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time journeyman electricians and apprentice electricians employed by the Employer at its Ellisville, Missouri facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collectivebargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated March 13, 2009, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit and furnish the Union with specific information. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since about March 13, 2009, the Respondent has failed and refused to recognize and bargain with the Union and to furnish the Union with the requested information. We find that this conduct constitutes an unlawful failure and refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about March 13, 2009, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to provide the Union with the requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

⁴ On February 24, 2009, the Board issued a Corrected Decision and Certification of Representative, correcting a typographical error in its original decision.

ORDER

The National Labor Relations Board orders that the Respondent, Eagle Ray Electric Company, Ellisville, Missouri, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to recognize and bargain with International Brotherhood of Electrical Workers, Local #1, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.
- (b) Refusing to furnish the Union information that is relevant to and necessary for the performance of its duties as the exclusive bargaining representative of the unit employees.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time journeyman electricians and apprentice electricians employed by the Employer at its Ellisville, Missouri facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

- (b) Furnish the Union the information it requested on March 13, 2009.
- (c) Within 14 days after service by the Region, post at its facility in Ellisville, Missouri, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

to all current employees and former employees employed by the Respondent at any time since March 13, 2009.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 29, 2009

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Electrical Workers, Local #1, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is necessary to and relevant for its role as the exclusive bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time journeyman electricians and apprentice electricians employed by us at our Ellisville, Missouri facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on March 13, 2009.

EAGLE RAY ELECTRIC COMPANY